



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 14, 2000

H.R. 4585 **Medical Financial Privacy Protection Act**

*As ordered reported by the House Committee on Banking and Financial Services
on June 29, 2000*

SUMMARY

H.R. 4585 would establish rules for financial institutions concerning the confidentiality of customers' medical information. The bill would prohibit financial institutions from disclosing a customer's health information without his or her affirmative consent. The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) would enforce the provisions of H.R. 4585 as it applies to the financial institutions that those agencies now regulate.

CBO estimates that implementing this legislation would not result in any significant cost to the federal government. Because enactment of H.R. 4585 would affect direct spending and receipts, pay-as-you-go procedures would apply to the bill. However, CBO estimates that any impact on direct spending and receipts would not be significant.

H.R. 4584 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

The bill would impose several new private-sector mandates on financial institutions that hold or handle health information about individuals. However, CBO cannot determine whether the direct cost of those requirements would exceed the statutory threshold for private-sector mandates specified in UMRA (\$109 million in 2000, adjusted annually for inflation). How regulators would implement certain provisions in the bill is very uncertain, and little information is available as to how some of the mandates would affect the operation of financial institutions.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Based on information from the NCUA, CBO estimates that implementing H.R. 4585 would increase administrative costs at the agency, but any such costs would be negligible.

Both the OTS and the OCC charge fees to cover all their administrative costs; therefore, any additional spending by those agencies to implement the bill would have no net budgetary effect. That is not the case with the FDIC, however, which uses deposit insurance premiums paid by all banks to cover the expenses it incurs to supervise state-chartered banks. The bill would cause a small increase in FDIC spending, but would not affect its premium income. Overall, CBO estimates that H.R. 4585 would increase direct spending and offsetting receipts for the OTS, OCC, and FDIC by less than \$500,000 a year over the 2001-2005 period.

Budgetary effects on the Federal Reserve are recorded as changes in revenues (governmental receipts). Based on information from the Federal Reserve, CBO estimates that enacting H.R. 4585 would reduce such revenues by less than \$500,000 a year over the 2001-2005 period.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Enacting H.R. 4585 would affect both direct spending and receipts, but CBO estimates that any such effects would be negligible.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 4584 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 4585 would require financial institutions that hold or handle individually identifiable health information (IIHI) to abide by several new mandates. The bill would require financial institutions to:

- Obtain affirmative consent from customers whose IIHI the financial institution intends to share with an affiliate or nonaffiliated third party;

- Allow customers the right to review, inspect, and correct IIHI held by the financial institution; and
- Obtain separate, affirmative consent from customers to share IIHI that is especially sensitive, such as information pertaining to mental health services and genetic information.

For reasons described below, CBO cannot determine whether the direct cost of those mandates would exceed the threshold specified in UMRA for private-sector costs (\$109 million in 2000, adjusted annually for inflation).

Affirmative Consent. While the bill would require financial institutions to obtain the customers' consent to share IIHI with affiliates or nonaffiliated third parties, it would exempt many uses of that information from the mandate. In general, those exceptions would enable financial institutions to use IIHI without consent for the purposes for which the information was collected, such as in calculating premium rates for insurance products, or to provide consolidated products and services to their customers, such as customer call centers or consolidated billing. According to industry sources, few current practices of financial institutions would require affirmative consent under the bill. However, CBO is uncertain as to whether changes in the financial services industry permitted by the recently enacted Gramm-Leach-Bliley Act (such as allowing financial institutions to affiliate with securities and insurance companies) will lead institutions to expand their uses of personal health information.

Consumers' Right to Review. The cost of the mandate to allow consumers to review information held by financial institutions would depend on how it would be interpreted by regulatory agencies. A broad interpretation of the type of information a consumer could be granted access to might include any IIHI located anywhere in the financial institution, including, for example, cancelled checks or credit card slips payable to health care providers. A request for information of that kind could require potentially time-consuming and expensive searches. On the other hand, if the access to information was limited to IIHI contained in a consolidated record created for the purpose of storing IIHI or that was used to make a business decision directly affecting the consumer, then the cost could be relatively low.

A provision in the bill allowing institutions to charge a “reasonable, cost-based” fee to consumers for providing this information would reduce the net cost of the mandate. The extent of that reduction would depend on the breadth of consumers’ access to their IIHI and on what costs would be offset by the fee. If the broader definition of the type of information to be made available were applicable, then institutions might have to develop new systems

for collecting all forms of IIHI. If the fee provision applied only to the marginal costs of collecting the information for the requesting consumer, then the institution might not be able to recover the fixed costs of developing the new systems. This could significantly raise the costs of complying with the bill. Once new systems are in place, the marginal costs of allowing the consumer to review and correct IIHI might be fully offset by the fee.

Consent to Share Sensitive Information. The cost to financial institutions of requiring separate consent to share sensitive information would depend in part on how regulatory agencies interpret the categories of information for which separate consent is required. Specifically, the term "genetic information" might be interpreted more or less expansively by regulators, potentially affecting the scope of information included in this category.

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